

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
CARMEN SOTO,)	CASE NO. 08-23905 JPK
)	Chapter 13
Debtor.)	
*****)	
CARMEN SOTO,)	
)	
Plaintiff,)	
v.)	ADVERSARY NO. 09-2140
FIRST FRANKLIN MORTGAGE LOAN)	
TRUST 2006-FF9, MORTGAGE PASS-)	
THROUGH CERTIFICATES, SERIES)	
2006-FF9,)	
Defendant.)	

ORDER ON MOTION FOR DEFAULT JUDGMENT ("MOTION")

This adversary proceeding was initiated by a complaint filed on August 7, 2009, which designated the defendant as First Franklin Mortgage Loan Trust 2006-FF9, Mortgage Pass-Through Certificates, Series 2006-FF9. No appearance or response to the complaint was filed by the defendant; an entry of default was made on February 8, 2010; and the Motion was filed on February 19, 2010. There is a significant problem: service of process was not properly effected upon a properly designated defendant.

Paragraph 7 of the complaint refers to a proof of claim filed on January 14, 2009, in reference to the defendant. The referenced claim, #4-1, designated the creditor as Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF9, Mortgage Pass- Through Certificates, Series 2006-FF9; the claim designated the address to which notices should be sent as "Home Loan Services, Inc., P.O. Box 1838, Pittsburgh, PA 15230-1838". Attached to the claim is a copy of a mortgage in which the lender is described as First Franklin a division of Nat. City Bank of IN. Also attached to the claim is an assignment of the mortgage from Mortgage Electronic Registration Systems, Inc., as nominee for First Franklin, to Deutsche Bank National Trust Company, as Trustee – the identical designation used to name the creditor in claim #4-1.

Based upon the foregoing, the proper defendant is Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF9, Mortgage Pass-Through Certificates, Series 2006-FF9, and thus the complaint has failed to designate the property defendant. The certificate of service filed on August 7, 2009 as record entry #3 states that service of summons and complaint was made upon Deutsche Bank National Trust Company, as Trustee, to: Attn: Highest Ranking Officer, c/o Home Loan Services, P.O. Box 1838, Pittsburgh, PA 15230-1838.

Unfortunately, this is not the address of Deutsche Bank National Trust Company, as Trustee, but rather an address designated for receipt of notices – not service of process – in the debtor's bankruptcy case. The Assignment of Mortgage attached as an exhibit to claim #4-1 states the address of Deutsche Bank National Trust company, as Trustee, as 150 Allegheny Center Mall, Pittsburgh, PA 15212.

As a result of the foregoing, no action has been commenced against Deutsche Bank National Trust Company, as Trustee (etc.), and no personal jurisdiction has been acquired over that entity. The entry of default on February 8, 2010 was improper, and must be set aside. The plaintiff's Motion for Default Judgment must be denied; the plaintiff must amend the complaint to designate the proper defendant, and then undertake necessary action to obtain issuance of summons and service of summons upon the properly designated defendant.

IT IS ORDERED that the Clerk's Entry of Default entered on February 8, 2010 is vacated.

IT IS FURTHER ORDERED that the Motion for Default Judgment filed on February 19, 2010 is denied, without prejudice.

IT IS FURTHER ORDERED that the plaintiff shall file an amended complaint, properly designating the defendant, within 21 days of the date of entry of this order, and shall then undertake necessary action to properly serve that defendant with summons and complaint.

Dated at Hammond, Indiana on March 3, 2010.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorney for Plaintiff